system of prevention. It is proposed that the already perilous weapon of prevention be given a double barrel and be handed over to the notoriously unrestrained and uncritical hands of state prosecutors. The implications of a sanction of such a dual system can hardly be overstated. Suffice it to say here that it may well indefinitely prolong the present crisis in civil liberty and the breakdown of our traditional concepts of free press, speech and assembly.

* * * * * *

Under our federal system, the powers of government are distributed under the Constitution between the central government and the states. Consequently, this Court is frequently called upon either to reconcile the differing policies of the federal government and the states so that they may coexist, or to uphold the national policy at the expense of state statutes.

The Court has employed a number of tests in the course of the past century and a half in working out a practical allocation of authority within the federal scheme of dual sovereignty. The question as to whether state action is precluded either because of congressional action in the area or by reason of the very nature of the sphere being regulated has been tested in the light of several criteria. In *Hines* v. *Davidowitz*, 312 U. S. 52, 67, this Court pointed out:

> "This Court in considering the validity of state laws in the light of * * * federal laws touching the same subject, has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference. But none of these expressions provides an infallible constitutional test or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear distinctly marked formula."

Six years later, in *Rice* v. *Santa Fe Elevator Corporation*, 331 U. S. 218, 230, several of the applicable yardsticks for

congressional supersedure of state legislation were laid down:

> "The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it. * * * Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. * * * Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose. * * * Or the state policy may produce a result inconsistent with the objective of the federal statute."

On the basis of these guiding decisions, at least four criteria emerge. These may be conveniently summarized as:

1. The pervasiveness test;
2. The conflict test;
3. The paramountcy test;
4. The exclusiveness test.

Applying these one by one to the question of federal supersedure of state sedition statutes, we suggest that these statutes will fall under any of these tests.

I

Federal statutes covering sedition are so pervasive as to preclude state legislation by occupying the field.

Federal legislation directed toward the control of subversive activities and based upon a theory of prevention, must be treated as an interlocking whole if the legal issue of preemption is to be viewed fully and three-dimensionally. However, in order to set reasonable bounds to the scope of this brief, we limit our discussion to the three main pillars which form the federal statutory structure in this area.

namely, the Smith Act, 54 Stat. 670, 18 U. S. C. 2384-2385 (1952 ed.); the Internal Security Act of 1950, 64 Stat. 987, 50 U. S. C. 781 ff. (1952 ed.); and the Communist Control Act of 1954, 68 Stat. 775 ff.*

The Smith Act covers advocacy of the overthrow of any government—federal, state or local—by force and violence, and organization of and membership in a group which so advocates. It proscribes an extraordinarily broad range of subversive utterances and activities, and punishes advocating, abetting, advising, or teaching the duty, necessity or desirability of overthrowing the government by force and violence. Conspiracy to commit any of these prohibited acts is denounced by the general criminal conspiracy provisions in 18 U. S. C. Sec. 371 (1952 ed.).

The Internal Security Act of 1950 is aimed more directly at the Communist Party by name, although the Smith Act has been utilized by the Justice Department since the end of World War II as an almost exclusively anti-Communist legal measure. The former proceeds on a somewhat different basis. It distinguishes between "Communist-action organizations" and "Communist-front organizations," requiring such organizations to register and to file annual reports with the Attorney General giving complete details as to their officers, members and sources of funds. 50 U. S. C. 782 ff. (1952 ed.). Members of Communist-action organizations must register as individuals with the Attorney General. *Ibid.*, Sec. 787. Failure to register in accordance with the requirements of Secs. 786-787 is punishable by a fine of not more than ten thousand dollars for an offending organization, and by a fine of not more than ten thousand dollars or imprisonment for not more than five

* While the Internal Security Act, the Communist Control Act and the Smith Act are the crucial enactments in this area, there are more than a score of additional congressional enactments policing subversion. See Cahn, *Freedom and Internal Security*, 64 Harv. L. Rev. 383, 386-388 (1951); Emerson and Haber, *Political and Civil Rights in the United States*, 458-463.

years, or both, for an individual offender—each day of failure to register constituting a separate offense. Ibid., Sec. 794(a).

The Communist Control Act of 1954 contains a legislative finding that the Communist Party is a "Communist-action organization" within the meaning of the Internal Security Act of 1950 and provides that "knowing" members of the Communist Party are "subject to all provisions and penalties" of the Act. 68 Stat. 775, Sec. 4.*

Statutes of such scope, implemented in part by a federal administrative agency (the Subversive Activities Control Board, a five-member agency created under the Internal Security Act of 1950, 50 U. S. C. 791), create a scheme of federal regulation which is so pervasive as to make reasonable the inference that Congress has left no room for the states even to supplement it. *Pennsylvania R. Co.* v. *Public Service Commission*, 250 U. S. 566. For in the words of Mr. Justice Holmes:

> "When Congress has taken the particular subject matter in hand, coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go." *Charleston & Western Carolina R. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, 604.

It has been argued that the assistance of the states is necessary in order to give full force and effect to the federal sedition laws and to "fill in the gaps." See brief of *amici curiae*, Wyman, et al. Such an argument is totally

* This newest federal law is significant in two respects for what it did *not* do. First, in refusing to impose direct criminal penalties upon Communist Party membership (or membership in "Communist-action," "Communist-front" or "Communist-infiltrated" organizations—the last a new term introduced by this law), it leaves room for the contention that Congress intended such persons to be covered by the registration provisions of the Internal Security Act of 1950, and not prosecuted under the state laws. Second, if Congress was disturbed by the decision in *Commonwealth* v. *Nelson*, *supra*, here was an easy opportunity for overturning it; this it did not do.

without substance in the present case. The Smith Act and the Communist Control Act of 1954 both expressly stipulate that they are aimed at protecting not merely the federal government, but state, territorial and even local government as well. 18 U. S. C. 2385, 50 U. S. C. 781. Federal law enforcement officials have zealously implemented the provisions of these acts. Through June 30, 1955, the Justice Department had secured indictments under the Smith Act against one hundred thirty-four persons from more than a dozen states. *Annual Report of the Director of the Administrative Office of the United States Courts*, A-49, A-20 (September, 1955). Four of the accused were indicted under the membership clause of the Smith Act and two of these have already been convicted. Nor has enforcement of the Internal Security Act been less lively. A number of organizations including the Communist Party itself, have had hearings before and have been officially ordered to register pursuant to the Act by the Subversive Activities Control Board. *Communist Party v. Subversive Activities Control Board*, No. 48, this Term.

Thus, the scope of the legislation and the vigor with which it has been enforced have placed the federal government in active control of this area of conduct. The purpose of federal authority to occupy the field becomes unmistakable. And the existence of such a manifest purpose has caused this Court uniformly to hold that the state law is precluded. *Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148; *Hill v. State of Florida ex rel. Watson*, 325 U. S. 538; *Bethlehem Steel Co. v. New York Labor Board*, 330 U. S. 767; *International Union, etc. v. O'Brien*, 339 U. S. 454.*

* In interstate commerce cases, the general rule adopted by this Court has been that state control is precluded if it concurs with or supplements a federal regulatory scheme. In *Napier v. Atlantic Coast Line R. Co.*, 272 U. S. 605, it was held that where Congress has occupied the field and statutes are directed to the same subject and the same object, state legislation is preempted.

II

The provisions and purposes of the state statutes conflict with federal statutes on the same subject.

A. Contradictory provisions make the two sets of statutes irreconcilable.

The most striking, outright conflict between the federal and state statutory provisions is Section 4(f) of the Internal Security Act of 1950. This section provides: "Neither the holding of office nor membership in any Communist organization by any person shall constitute *per se* a violation of . . . this section *or of any other criminal statute*." (Emphasis added.) 50 U. S. C. 783(f) (1952 ed.). The canons of statutory interpretation dictate that the phrase be interpreted in a reasonable manner. So understood, "*any* other criminal statute" must be taken to mean any and all criminal statutes, *both* state and federal.

Despite this universally applicable immunity statute, the states of Florida and Massachusetts have laws relating to subversive activity making such membership a criminal act *per se*. Fla. Stat. Ann., Tit. 44, Ch. 876, Sec. 876.02(5); Mass. Ann. L., c. 264, Secs. 16, 16A and 19.

Here is a clear example of state statutes whose terms contradict the federal statute. Under the federal statute, not only is membership in a Communist organization declared not to be a crime *per se*, but it is also declared to be non-violative of any other criminal statute; under state statutes, however, such membership becomes a crime *per se*. Under the supremacy clause of the Constitution, where there is such direct repugnance between federal and state legislation, the latter cannot stand. *Sinnot* v. *Davenport*, 22 How. 227, 243.

B. Conflicting purposes of the statutes make coexistence of the statutes impossible.

The purpose of recent congressional legislation as evidenced in the legislative deliberations surrounding the Acts of 1950 and 1954 seems clear. Proposals to outlaw the Communist Party have been repeatedly rejected by Congress (see, *e.g.*, 81st Cong., 2d Sess., H. R. Rep. No. 2980, 5), and it has chosen instead a form of legislation calculated not to "drive the Communists underground" but to expose their activities to full public scrutiny by means of public registration. McCarran, *The Internal Security Act of 1950*, 12 U. of Pitt. L. Rev. 481, 484 (1951). A careful reading of the "Congressional Finding of Necessity" in the Internal Security Act of 1950 strongly implies this. 50 U. S. C. 781. The requirements of registration of so-called "Communist-action" and "Communist-front" organizations as defined by the statute, the filing of reports, the registration of individual members of "Communist-action" organizations, at least *prima facie* suggest such a conclusion, particularly when read against the immunity provision of Sec. 783(f). 50 U. S. C. 782 ff.

State legislation making membership in Communist organizations unlawful is totally irreconcilable with this stated congressional purpose. The purpose of state legislation is to outlaw, not to expose, such conduct, and thwarts the expressed congressional policy. This Court has refused to tolerate state legislation which "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, *supra*.

The membership provisions of the state statutes stand to frustrate the congressional purpose from a very tangible and practical standpoint. Whatever may be the prospects of voluntary compliance with the registration provisions of the Internal Security and Communist Control Acts, the reluctance of Communist organizations and their members

to register will certainly be increased considerably if they are thereby made subject to prosecution under state law.*

Still another conflict in purpose must be noted. Stringent as the provisions of the congressional statutes are, they evince a greater measure of regard for the constitutional rights of the individual than do the state enactments. The federal statutory provisions manifest some awareness that Congress is exercising power in the "delicate area" of protected rights under the First and Fifth Amendments to the Constitution. Thus, for example, even a report of the House Committee on Un-American Activities on the Internal Security Bill in 1950 states:

> "The committee approached the problem with care and restraint because it is believed essential that any legislation recommended be strictly in accordance with our constitutional traditions. How to protect freedom from those who would destroy it, without infringing upon the freedom of all our people, presents a question fraught with constitutional and practical difficulties. We must not mortally wound our democratic framework in attempting to protect it from those who threaten to destroy it." 2 U. S. Code Cong. Serv. 1950, 3888.

Although it may be seriously questioned whether the body of federal legislation reflects "care and restraint," still the registration system of the Internal Security Act of 1950 reflects at least to some small degree a concern for the forms of due process of law.

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* Of course, if the immunity section of the Internal Security Act applies to all criminal statutes of the states (and a fair reading of the words leaves little room for any other interpretation), then the danger of frustration of the congressional purpose of exposure through registration may diminish; but the irreconcilability of the federal and state statutes on their face becomes the more inescapable. There is then clear repugnance in *either* case; that is, either for the reason that what is expressly stipulated in the federal statute as no crime, federal or state, is a crime under the state statutes; or, if the clause is interpreted as having reference only to other federal laws, for the reason that the state laws militate strongly against registration under the federal law.

The states, generally, have failed to provide any safeguards. The Florida and Massachusetts statutes, as has been shown, declare the Communist Party to be an unlawful subversive organization by legislative fiat, without benefit of a hearing, administrative or otherwise. Subversive organizations are, generally, not ordered to register, as under the federal laws, but *dissolved* in total disregard of the speech and assembly provisions of the First Amendment. New Hampshire Laws, 1951, c. 193, ch. 457-A, Sec. 5; Fla. Stat. Ann., Tit. 44, Sec. 876.26 (1954 Supp.); Mass. Ann. Laws, c. 264, Secs. 17 and 18 (1954 Supp.). Knowing members of such subversive organizations are declared criminals and subject to criminal penalties, again in contrast with the federal statutes. Fla. Stat. Ann., *op. cit.*, Sec. 876.24; Mass. Ann. Laws, *op. cit.*, Sec. 19; New Hamp. Laws, *op cit.*, Sec. 3. Above all, the statutes in Florida, Kentucky, Massachusetts and New Hampshire are so seriously deficient in concreteness and definition as to permit the kind of arbitrary, attainting and punitive implementation to which the facts outlined above amply attest.

Finally, the great diversity of procedures by state attorneys general, by county prosecutors and by special investigating commissions—of which the facts described above are illustrative—brings to mind the warning which this Court issued in the course of striking down a Pennsylvania statute which created certain supplemental labor management remedies, *Garner* v. *Teamsters, Chauffeurs and Helpers Local Union*, 346 U. S. 485, 490-491:

> "A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law."

Indeed, the situation at least in the eastern part of the United States was becoming so confused and contradictory that in 1952 the "Eastern Region of the Association of Attorneys General" asked its national association to investi-

gate the desirability of a uniform subversive activities statute.

Such conflicts in purposes, policies and procedures exemplify the kind of concurrent authority which this Court has always found intolerable and from which preemption will always be inferred. For as the Court held in *Hill v. State of Florida ex rel. Watson, supra*, at 543, two sets of statutes, if their coexistence is to be permitted, must "move freely within the orbits of their respective purposes without impinging upon one another."

C. Disparate penalties under state statutes conflict with the congressional scheme of deterrents.

As we have shown, Congress has enacted a comprehensive scheme for the prevention of threats to the internal security of the United States. The punishment provided for violation of the Smith Act was an implementation of the congressional policy of establishing a uniform national system for the prevention of subversion. The deterrents established in this scheme clearly must have been intended to prevent the evil at which the laws were aimed, while at the same time over-deterrence was avoided, lest federally protected rights of freedom of speech, press and assembly be unduly undermined. While it was the congressional purpose to make violation of the Smith Act punishable by five-, six-, or ten-year maximum prison sentences (depending on the section of the Act under which conviction is had, 18 U. S. C. 2384-2385 (1952 ed.)) Florida's "Little Smith Act" imposes a maximum penalty of twenty years. (Fla. Stat. Ann., Tit. 44, Sec. 876.30); Kentucky imposes a maximum penalty of twenty-one years (Ky. Rev. Stat., 1953, c. 432, Secs. 432.020, 432.030), and even heavier penalties are imposed in certain other states. Such disparity in penalties prescribed for the same offense illustrates the conflict between the statutes and destroys the all-important balance between prevention of subversion and the protection of civil liberty.

Nor can it be said to have been within the contemplation of Congress that there should be multiple penalties for the same offense. In actual fact, an individual offender could be indicted, convicted and punished in every state which has a sedition statute (which now number thirty-one, Gellhorn, *The States and Subversion*, 397 (1952)), in addition to federal prosecution, depending on how many jurisdictions were able to obtain service of their criminal process upon him. *Commonwealth* v. *Nelson*, 377 Pa. 58, 70-71 (1954).

United States v. *Lanza*, 260 U. S. 377, does not help petitioner, as it seems to believe (Brief of Petitioner, 64). In the first place the concurrent power which was there upheld was expressly inserted into the Eighteenth Amendment (Section 2), and it was the Chief Justice's contention that "the probable purpose" of this section "was to negative any possible inference that in vesting the national government with the power of country-wide prohibition, state power would be excluded" (at 381).

More importantly, even if the *Lanza* rule permits that a defendant in a criminal case may be punished twice for the same act, it is obvious that the Pennsylvania legislature did not intend, nor did Congress, that violation of their respective sedition advocacy statutes should incur a maximum penalty of thirty years in prison, or a thirty thousand dollar fine, or both—that is, the combined penalty of the two statutes. Such punishment exceeds what either sovereign considered necessary for deterrence. As Mr. Justice Washington warned in *Houston* v. *Moore*, 5 Wheat. 1, 23:

> "* * * to subject them [the defendants] to the operation of two laws upon the same subject dictated by distinct wills particularly in a case inflicting pains and penalties is to my apprehension something very much like oppression if not worse."

There is no evidence to indicate that Congress has considered the penalties imposed by state legislatures for this type of conduct as being supplemental sanctions. Such an assumption is incredible in view of the fact that seventeen

of the states have no sedition statutes at all, and the variations in wording and penalties in the remaining thirty-one are almost infinite. Gellhorn, *The States and Subversion*, 397 (1952); Emerson and Haber, *Political and Civil Rights in the United States*, 462-463 (1952).*

The dissenting opinion of Mr. Justice Frankfurter in *California* v. *Zook*, 336 U. S. 725, 738-740, is here directly in point:

> "One would suppose that, when Congress has proscribed defined conduct and attached specific consequences to violations of such outlawry, the States were no longer free to impose additional or different consequences by making the same misconduct also a state offense. * * * When Congress deals with a specific evil in a specific way, subject to specified sanctions, it is not reasonable to require Congress to add, 'and hereafter the States may not also punish for this very offense,' to preclude the States from outlawing the same specific evil under different sanctions. *To do so would impute to Congress the purpose of imposing upon a nation-wide rule the crazy-quilt of diversity—actual or potential—in State legislation*, when the federal policy was adopted by Congress precisely because it concluded that the manner in which the States, under their permissive power, dealt with the evil was unsatisfactory. * * * *It also disregards an important aspect of civil liberties, namely, avoidance of double punishment for the same act even though such double punishment may be constitutionally permissible.*" (Emphasis added.)

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*Clear recent evidence of the fact that Congress, as well as the Justice Department, do not consider the dissimilar state sanctions as supplemental deterrents, may be found in the report of the House Judiciary Committee on H. R. 2854, a bill to increase the penalties for violations of the Smith Act, which was strongly supported by Attorney General Brownell: 84th Cong., 1st Sess., H. R. Report No. 922 (June 27, 1955). The Report stated:

> "The Committee finds that these Amendments fill the need for realistic uniformity as to maximum penalties for this group of related offenses. * * * It is believed that conspirators who act to the detriment of the United States in behalf of world communism should similarly be subject to much more severe penalties than the law provides for them at the present time."

The concurrence of thirty-two sets of laws regulating the same subject, even if not always inconsistently, is bound to result in such confusion and division of responsibility as seriously to impair the effective operation of all the laws. Such confusion, duplication, inefficiency and disregard for individual rights in a field of vital national importance is an intolerable exercise of concurrent power. Such effects of concurrent authority cannot rationally be ascribed to the federal legislative purpose.

Congress did not intend the development of what might be termed a "Balkánization of sedition" which permits some states to prescribe extremely heavy penalties for this offense, others milder ones, and still others none at all. Nor can Congress have intended the incredible situation to develop in which American citizens would be forced to take up residence in certain states rather than others, in order to avoid the political climate engendered by repressive statutes such as those in Massachusetts, New Hampshire, Kentucky and Florida.

III

The paramount interest of the United States in the area of sédition control precludes state legislation.

Even if this Court were to conclude that federal sedition laws are not in conflict with state legislation in this area and, further, that the former do not comprise so comprehensive a scheme of regulation as to constitute effective occupation of the field, we suggest that the interests of the national government are so dominant here as to require exclusion of the states. In the area of sedition the power of the United States is paramount. The intention of Congress to preempt the field may be inferred from (a) the relevant constitutional mandate and (b) the nature of the conduct controlled.

A. The federal government, by constitutional mandate, has a paramount interest in the internal security of the United States and all political subdivisions.

Article IV, Sec. 4 of the Constitution, states:

> "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence."

The first part of this section reveals the national paramount interest in protecting the republican form of government of the states against attack from within or without.* Whatever one may think of either the constitutionality or the necessity of the measures which the Congress has taken to implement this paramount interest, the fact still remains that this is a matter of primary and basic federal concern.

In enacting the Smith Act, Congress reflected this interest by referring specifically to the overthrow of "the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein." 18 U. S. C. 2385. As the Pennsylvania Supreme Court observed in this regard: "Federal preemption could hardly be more clearly indicated." 377 Pa. 58, 70.

The Internal Security Act of 1950, in its finding of necessity, makes specific reference to the congressional duty "to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government." 50 U. S. C. 781.

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* To the extent that this constitutional provision suggests any initiative or responsibility at all for the states in this area, it would appear to be limited to cases of *actual domestic violence*, a matter in itself of the utmost significance, as will be shown *infra*.

The Communist Control Act of 1954, like the Smith Act, speaks of the overthrow of "the Government of the United States, or the government of any State, Territory, District, or possession thereof, or the government of any political subdivision therein." 68 Stat. 775, 776, Sec. 3 (1954).

The paramount interest of the national government to protect itself *as well as the states* against sedition could hardly be mirrored more vividly than in these statutory provisions. As a practical matter, "it is difficult to conceive of an act of sedition against a State in our federated system that is not at once an act of sedition against the Government of the United States,—the Union of the forty-eight component States." *Commonwealth* v. *Nelson*, *supra*, at 69. Nor is it surprising that no state sedition statute described above limits itself to sedition committed against that state.*

Thus, the states themselves have recognized that sedition is not really a matter of local concern, but is inextricably interwoven with the security of the United States as a whole. It is not surprising that in the case at bar there is not a single word indicating a seditious act or utterance against the state of Pennsylvania. *Commonwealth* v. *Nelson*, *supra*, at 69.

The problem of so-called "subversion" is a national one calling for solution on a national scale. Where the concern of the national government is as clearly dominant as here and where the area of concurrent power is as closely intertwined with the national interest, it requires little in the way of federal legislation to exclude the states from the field. For as this Court held in *Kelly* v. *Washing-*

* Compare Fla. Stat. Ann., Title 44, C. 876; Ky. Rev. Stat., 1953, C. 432, Sec. 432.030; Mass. Ann. Laws, C. 264, Sec. 16 (1954 supp.); New Hamp. Laws, 1951, C. 193, ch. 457-A, Sec. 2. In *State ex rel. Feldman, et al.* v. *Kelly*, 76 So. 2d 798, 801 (1954), the Florida Supreme Court concluded:

> "In legal effect the latter Florida Act is a rescript of the Smith Act, both having been designed for the same purpose."

ton, 302 U. S. 1, 9, "if the subject is one demanding uniformity of regulation," then "state action is altogether inadmissible" even "in the absence of federal action."

B. The federal government has a dominant interest in striking a balance between curbing sedition and protecting fundamental rights and freedoms.

Sedition legislation involves the problem of advocacy. Whether in the form of a sedition or a criminal anarchy statute, its basic thrust is the criminal punishment of speech. This crucial element is lost sight of by the Department of Justice in its analogy of sedition to treason. Brief for the United States as *Amicus Curiae*, 14-15, as well by petitioner in its Brief, at 27-28. To equate sedition with the right of the states to "self-preservation" either misses the point or distorts it. Depriving the states of the means to enforce sedition statutes does not strip them of their "inherent" right of self-defense; to the contrary, there are numerous state statutes to deter and punish actual or threatened internal civil disturbances, whether they take the form of insurrection, riot or even incitement to riot. A finding of preemption by this Court in the instant case need have no preclusive effect whatever on such laws.

The fact that seditious utterances may conceivably and speculatively give rise to riot and other public disturbances does not empower the state, by virtue of its undeniable authority to police the latter, to police the former. The rights which anti-subversive laws seek to curb, namely, speech and assembly, are manifestly in the category of "fundamental principles of liberty and justice which lie at the base of all our civil political institutions." *Hebert v. Louisiana*, 272 U. S. 312, 316. Once the smoke-screen created by terms like "self-preservation", "attacks", "force and violence", "insurrection", and the rest, is cleared away and the actual wording of the relevant statutes carefully considered, it becomes clear that this legislation "deals with the rights, liberties and personal freedoms of human

beings", a very different category from "state tax statutes or state pure food laws regulating the labels on cans." *Hines* v. *Davidowitz*, *supra*, at 68. The opinion by this Court in *Hines* is particularly apposite to the problem in the instant case (at 70):

> "The nature of the power exerted by Congress, the object sought to be attained, and the character of the obligations imposed by the law, are all important in considering the question of whether supreme federal enactments preclude enforcement of state laws on the same subject. Opposition to laws permitting invasion of the personal liberties of law-abiding individuals * * * is deep-seated in this country. Hostility to such legislation in America stems back to our colonial history * * *."

Thus, there is a direct connection between the supersedure issue and the protection of constitutional rights and liberties. The interest of the federal government in the freedoms guaranteed to all its citizens is readily understood when the term "national security" is placed in its correct historical, political and legal perspective. The security of the Republic is tied less intimately to the regulation of the elusive concept of sedition than to the guarantee of constitutional liberties. In the words of Mr. Chief Justice Hughes:

> "The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government." *DeJonge* v. *Oregon*, 299 U. S. 353, 365.

It is for these reasons that the legislatures of the states are not unfettered in their judgment as to the kinds of

cumstances which may be penalized. And as the Pennsylvania Supreme Court interpreted the *DeJonge* opinion, *Commonwealth v. Nelson*, supra, at 76:

> "If this counsel is to be heeded faithfully, it is essential that criminal sanctions for conduct hostile to our Federal Government be promulgated, imposed and controlled uniformly for the nation as a whole. And that, only the central Government can accomplish."

The basic theory of sedition statutes, whether federal or state, is that certain forms of speech may possibly condition the minds of the audience to perform illegal or criminal acts when circumstances permit. But this form of offensive conduct does not vary with *local* circumstances. The teaching of Marxism-Leninism, for example, is hardly more incendiary in New Hampshire than, let us say, in Pennsylvania or Massachusetts or Florida.

Thus, the *nature* of the conduct being controlled in sedition laws requires, on the one hand, deference to the paramount interest of Congress in the protection of civil liberties and, on the other hand, uniformity in the regulation of the conduct which by definition poses a problem which is national in scope and not subject to local variability. This, the Federal Constitution requires.

Under the First Amendment this Court has traditionally held that "seditious" words become criminal only when they are used "in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." *Schenck v. United States*, 249 U. S. 47, 52.

If, as Mr. Justice Holmes urged in the *Schenck* case, the character of the act depends upon the "circumstances" in which it is done, and if such delicate factors as "proximity" and "degree" must be weighed in the balance, then, it can hardly be maintained that each state can judge for itself as to when the conditions are constitutionally appro-

priate for legislating against or prosecuting such seditious activity.

The impact of the First Amendment upon sedition statutes thus involves a grave national policy decision requiring the balancing of weighty and momentous considerations. Compare *Dennis* v. *United States*, 341 U. S. 494; *American Communications Association* v. *Douds*, 339 U. S. 382. This is not a decision which can rationally be assigned to the conflicting views of forty-eight different jurisdictions. It is peculiarly restricted to the federal sovereignty and the federal sovereignty alone.

Thus, the paramount responsibility of the federal government in preserving the constitutional liberties of the nation emphasizes the necessity for a total exclusion of the separate state sovereignties from this entire field.

IV

The regulation of sedition has direct impact upon foreign relations which are exclusively a federal sphere of authority.

The enforcement of federal sedition statutes is intimately tied to issues involving the foreign relations of the United States. These laws have, at least in part, been (1) prompted by foreign policy considerations, (2) aimed at what is consistently alleged to be an *international* movement, and (3) executed and enforced with a view toward anticipated reactions abroad, on the part of both friendly and unfriendly powers.

The legislative history of the three federal statutes on which attention has been focussed throughout this brief leaves little room for doubt as to the impact of foreign relations upon Congress at the time such legislation was passed. Passage of the Smith Act in 1940 followed the German-

Soviet Non-Aggression Pact and the Soviet-Finnish War. It was a time of emerging tensions with the Soviet Union. The United States appeared to be in a precarious and difficult international situation. All of these factors played an important role in the enactment of the sedition statute of that year, so reminiscent of the Alien and Sedition Acts of 1798 in its structure and phraseology. See 41 Columbia L. R. 159 (1941).

A decade later, when the Internal Security Act was passed, this nation was at war with communism in Korea. Even before the outbreak of the Korean War in June, the Senate Judiciary Committee reported favorably on the bill, stating (81st Cong., 2d Sess., Sen. Rep. No. 1358, 6):

> "Our foreign policy is currently embarking upon a course of 'total diplomacy' to curb the aggression of Communism throughout the world. To resist Communist aggression abroad and ignore its clear and present danger at home would be an utterly myopic manner of procedure."

In 1954, despite the Korean armistice, a momentary hysteria in Congress made it possible to add another panel in the anti-sedition framework, the Communist Control Act.*

The provisions of the last two statutes emphasize the international aspect of the subject-matter under regulation. Thus, Sec. 2 of the Internal Security Act of 1950 declares that the Communist movement is a "world-wide revolutionary movement", that it is allegedly directed and controlled by a "foreign country", and that the United States Communist Party is controlled by "foreign agents" who

---

* Actually, there was so much haste and confusion surrounding the passage of this statute that it would be presumptuous for anyone to suggest what the true legislative intent of Congress was in enacting this law. See 64 Yale Law J. 712-714 (1955).

are members of "foreign legations" and "international organizations". 50 U. S. C. 781.*

Although there is nothing in the phraseology of the Smith Act to suggest foreign policy as a factor in its enforcement, it has been so interpreted by the courts. See *United States* v. *Dennis*, 183 F. 2d 201, 213 (C. A. 2). In *Dennis* v. *United States*, 341 U. S. 494, 510-511, the Court made the factor of world conditions a crucial element:

> "The formation by petitioners of such a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions, similar uprisings in other countries, and the touch-and-go nature of our relations with countries with whom petitioners were in the very least ideologically attuned, convince us that their convictions were justified on this score [of clear and present danger]."

Mr. Justice Frankfurter, concurring in the judgment, pointed out that the Court will take judicial notice of the fact that "the Communist doctrines which these defendants have conspired to advocate are in the ascendancy in powerful nations who cannot be acquitted of unfriendliness to the institutions of this country." *Dennis* v. *United States*, *supra*, at 547.

It is a fact that a decision to undertake a program of sedition prosecution is one which is fraught with political implications at home and abroad. Our stature as a democratic people suffers abroad to the extent that we deprive our citizens of fundamental constitutional rights and liberties. If we are to face the risk of an inconsistency between our professions and our deeds, then it is eminently reasonable that such a balancing of our national need for internal security against our foreign responsibilities be

* See also Sec. 6 of the Act which denies passports to members of Communist organizations, as one of the penalties imposed. 50 U. S. C. 786.

done by those charged with the conduct of our foreign policy. It cannot conceivably be done by the New Hampshire or Massachusetts attorney general or by local prosecuting attorneys in Louisville or Miami.

The dominance of foreign policy considerations in this extremely complex area of criminal law enforcement brings into play the rule of *United States v. Pink*, 315 U. S. 203, 232:

> "If state action could defeat or alter our foreign policy, serious consequences might ensue. The nation as a whole would be held to answer if a State created difficulties with a foreign power."

This Court, in *Hines v. Davidowitz*, *supra*, held a mere *affecting* of international relations (such as involved in the alien registration provisions of the Smith Act) to be sufficient basis for a finding of preemption of a state statute in the same field. As the Court there stated, foreign relations comprise "the one aspect of our government that from the first has been most generally conceded imperatively to demand broad national authority. Any concurrent state power that may exist is restricted to the narrowest limits."

CONCLUSION

The witch hunt which followed the First World War did not abate when prosecutions ceased on a federal level. The fact is that invasions of civil liberties, both substantive and procedural, continued as a result of state prosecutions long after federal repression subsided. Not only did these state prosecutions prolong the prevailing atmosphere of repression, but it carried it into areas which even the federal authorities had avoided. A study of the criminal syndicalist prosecutions, for example, will reveal that these were employed in the states in order to affect legitimate competi-

tion for political and economic status. They were directed at the labor movement throughout the country. They were used by the Associated Farmers in California to prevent the organization of agricultural workers and by owners of timberlands in the Northwest for similar purposes. And they were used in the Southern states to repress attempts to eliminate racial discrimination.

A reversal of the decision of the Pennsylvania Supreme Court may very well set in motion a wave of prosecutions and abuses which will plague our country for years to come. If past history is a guide, there is substantial reason to fear that such a reversal will place in the hands of local anti-labor, anti-Negro and anti-foreign-born groups a potent weapon for a serious attack upon the democratic process itself.

For the foregoing reasons, it is respectfully submitted that the judgment of the Supreme Court of Pennsylvania should be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1955

COMMONWEALTH OF PENNSYLVANIA, *Petitioner*,

v.

STEVE NELSON, *Respondent*.

On Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania, Western District

BRIEF FOR THE CIVIL LIBERTIES COMMITTEE OF THE PHILADELPHIA YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS, AMICUS CURIAE

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OPINION BELOW

The opinion of the Supreme Court of Pennsylvania dated January 25, 1954, from which the Commonwealth of Pennsylvania takes this appeal, and a note regarding the order of the Supreme Court of Pennsylvania denying the petition by the Commonwealth of Pennsylvania for a rehearing dated April 27, 1954, are reported at 377 Pa. 58, 104 A. 2d 133.

STATUTES INVOLVED

The Pennsylvania Sedition Act of 1919, re-enacted as a part of Pennsylvania's Criminal Code of 1939 by Section 207 of the Act of June 24, 1939, P. L. 872 (18 P. S. §4207), provides:

> The word "sedition," as used in this section shall mean:
>
> Any writing, publication, printing, cut, cartoon, utterance, or conduct, either individually or in connection or combination with any other person, the intent of which is:
>
> (a) To make or cause to be made any outbreak or demonstration of violence against this State or against the United States.
>
> (b) To encourage any person to take any measures or engage in any conduct with a view of overthrowing or destroying or attempting to overthrow or destroy, by any force or show or threat of force, the Government of this State or of the United States.
>
> (c) To incite or encourage any person to commit any overt act with a view to bringing the Government of this State or of the United States into hatred or contempt.

(d) To incite any person or persons to do or attempt to do personal injury or harm to any officer of this State or of the United States, or to damage or destroy any public property or the property of any public official because of his official position.

The word "sedition" shall also include:

(e) The actual damage to, or destruction of, any public property or the property of any public official, perpetrated because the owner or occupant is in official position.

(f) Any writing, publication, printing, cut, cartoon, or utterance which advocates or teaches the duty, necessity, or propriety of engaging in crime, violence, or any form of terrorism, as a means of accomplishing political reform or change in government.

(g) The sale, gift or distribution of any prints, publications, books, papers, documents, or written matter in any form, which advocates, furthers or teaches sedition as hereinbefore defined.

(h) Organizing or helping to organize or becoming a member of any assembly, society, or group, where any of the policies or purposes thereof are seditious as hereinbefore defined.

Sedition shall be a felony. Whoever is guilty of sedition shall, upon conviction thereof, be sentenced to pay a fine not exceeding ten thousand dollars ($10,000), or to undergo imprisonment not exceeding twenty (20) years, or both. 1939, June 24, P. L. 872, §207.

The Smith Act of 1940, as amended, Section 2385 of the Federal Code of Crimes and Criminal Procedure of June 25, 1948, 62 Stat. 808 (18 U. S. C. A. 2385), provides:

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or

propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

In addition see other enactments by the Congress dealing in part with problems of sedition against the United States, including the Internal Security Act of 1950, 64 Stat. L. 993 and 996 (1950), 50 U. S. C. (1952) §§785 and 789; The Immigration and Nationality Act of 1952, 66 Stat. L. 166 (1952), 8 U. S. C. (1952) §1101 et seq.; and the Communist Control Act of 1954, P. L. No. 637, 83rd Congress, 2nd Session (August 24, 1954).

QUESTION PRESENTED

Must this Court reverse the Supreme Court of Pennsylvania's decision *that* in view of the preeminence of the Federal Government's interest in defending itself efficiently and effectively against sedition its control of the field must be exclusive, and the Smith Act, defining and punishing sedition against the United States, preempted the field and suspended operation of the Pennsylvania Sedition Act, and reversing the judgment of conviction of sedition entered against Steve Nelson in the Court of Oyer and Terminer of Allegheny County and quashing the indictment charging him with sedition.

STATEMENT OF INTEREST

The Civil Liberties Committee of the Philadelphia Yearly Meeting of the Religious Society of Friends (hereinafter called the "Committee") is concerned to protect and nurture civil liberties, that is: freedom, justice, and equality for each person regardless of ancestry, religion or political belief. This concern stems from the experiences of Friends over the past 300 years. An outline of these experiences appears in Appendix A.

The Committee was established by the Philadelphia Yearly Meeting of the Religious Society of Friends in March, 1955. In this Brief the Committee speaks for itself alone.

The Committee regards the issues posed for this Court by this case as grave and far-reaching in the life of our society. We feel we cannot remain silent when personal liberty and human rights are being sacrificed in the name of national security.

As the Supreme Court of Pennsylvania pointed out:

> The prosecution's evidence consisted in large part of proof of the defendent's membership and official position in the Communist Party, his attendance at Party meetings and the introduction of a mass of documentary evidence consisting of books, papers and pamphlets advocating, teaching or promulgating Communist doctrine, found in the Party headquarters and bookstore in Pittsburgh of which the defendant was a supervising principal.

From our reading of the record, it appears to us that this case involves solely freedom to speak and to hear, freedom to write and to read, and freedom to be a member and officer of the Communist Party which Congress has declared not to be a crime. See Section 4(f) of the Internal Security Act of 1950, 50 U. S. C. §783 (1952).

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ARGUMENT

Petitioner seeks to have this Court reverse a decision by the Supreme Court of Pennsylvania. If this Court finds that decision to be a proper one, either for the reasons given by the Supreme Court of Pennsylvania, or for constitutional reasons not considered by that Court, or for any other reason, then the decision below must be affirmed.

The Supreme Court of Pennsylvania rested its decision on the soundness of defendant's contention that the Pennsylvania Sedition Act of 1919 was suspended by operation of law when Congress enacted the Smith Act of 1940 and preempted for the Federal Government the field of sedition against the United States. For a lucid review of relevant cases on preemption see *Federal Supremacy and State Anti-Subversive Legislation* by Alan Reeve Hunt, J. D., appearing in Michigan Law Review, January 1955, Vol. 53, No. 3.

The Trial Judge in his lengthy charge to the Jury (Record pp. 1388-1420) summarized the issues thus:

> The fundamental question to be answered is: Did the defendant intend and was the purpose of the Communist Party of the United States of America to work within the framework of democracy as limited by the Statute we are considering; or did he and his party intend to go outside the bounds set up by the Statute in accomplishing their purposes. This is the controversial question. (Record 1417; folio 2706).

Accordingly, this case also presents for this Court the question: Are the limitations placed upon the framework of democracy by the Pennsylvania Sedition Act permissible under the Constitution of the United States?

The Committee respectfully contends that these limitations are not permissible and that the Pennsylvania Sedition

Act as here applied offends against the Constitution of the United States.

When the Smith Act was upheld despite the prohibitions of the First Amendment, two Justices of this Court dissented. Their warnings are most apposite to the issues in the case at bar.

Mr. Justice Douglas said: ". . . The Act, as construed, requires the element of intent—that those who teach the creed believe in it. The crime then depends not on what is taught, but on who the teacher is. That is to make freedom of speech turn not on *what is said*, but on the *intent* with which it is said. Once we start down that road we enter territory dangerous to the liberties of every citizen."

Mr. Justice Black concluded: "Public opinion being what it now is, few will protest the conviction of the Communist petitioners. There is hope, however, that in calmer times, when present pressures, passions and fears subside, this or some later Court will restore the First Amendment liberties to the high preferred place where they belong in a free society."

Among those who protested was a Friend who has participated in the work of the Committee. Together with four other citizens, Clarence Pickett declared his agreement with the views of Justices Douglas and Black. (See Appendix B.)

The Committee believes that no man should be prosecuted for advocacy of religious or political ideas nor be condemned for mere associations. It believes the Pennsylvania Sedition Act as applied violates these fundamental principles and must be found to abridge individual liberties protected by the Constitution. For a statement by Steve Nelson concerning his motivation and beliefs, see Appendix C.

The Supreme Court of Pennsylvania rested its decision on preemption by the Federal Government of the field of sedition against the government of the United States. In a Federal system such as ours there must be orderly division of authority and responsibility between Federal Government and the State Governments in areas affecting both.

But in a field where the First Amendment and the Fourteenth Amendment of the United States Constitution forbid legislative encroachment on freedom to speak and to hear and on freedom to write and to read, the determination of how far these freedoms can wisely be limited should be for Congress rather than for the legislatures of 48 States. Ultimately ~~the~~ determination of what is constitutionally permissible is for this Court in a democracy where these freedoms are not only ends in themselves as necessary to the dignity of man, but also essential means to that peaceful change which makes revolution in America as unlikely as it is unnecessary. . .

In his Report of The Fund for the Republic dated May 31, 1955, President Robert M. Hutchins wrote:

> Although in some particulars the atmosphere is better than it was five years ago, the misunderstanding of civil liberties, the indifference to them, and the violations of them, to which we too easily grow accustomed, are still such as to give cause for alarm. These hard-won rights are the distinguishing characteristic of the Western tradition; they are the deepest values in American life. America would be unrecognizable without freedom of speech, freedom of the press, freedom of religion, freedom of association, and the freedom to differ; without due process of law and the equal protection of the laws; without the conviction that all men are created equal and are entitled to equality of opportunity. Without these there would be no hope for the American Dream. . . .

The Committee respectfully suggests to this Court that faith in America and her citizens is the antidote to the fear that has colored so much of our national life during the past ten years. America itself was an act of faith—and so was the great charter by which its development was to be guided.

Often the interest of the nation in security and the interest in freedom for each individual are said to be in

conflict. We respectfully submit that in the long run the two are interdependent. The strength of America lies in our ability to experiment with truth, to accept new ways of coöperating with nature to meet human needs. Difficult problems confront all men, such as how to achieve order under law in the world community and render war obsolete before war renders us obsolete, and how to distribute the abundance we now know how to produce and thereby make its production and enjoyment possible. The quest for solutions to these pressing problems requires unfettered inquiry, association and discussion. The best efforts of all our people will be needed to help find answers along the way. Freedom to speak and freedom to hear, freedom to write and freedom to read, freedom to associate and to travel—these are ends of great worth but they are also necessary means to a vital, functioning democracy.

If we are to co-exist on this earth with other political, social and economic systems, then we want to compete with them for the allegiance of those not yet committed to any system. We want to demonstrate the superiority of our way of meeting human needs. To do so requires faith in our institutions and faith in the decency of men and women of all nations. To weaken, postpone or abandon our faithful exercise of the freedoms that lie at the heart of the American dream is to promote not the security of America but its downfall.

Conclusion

For the reasons given the Committee respectfully submits that the decision of the Supreme Court of Pennsylvania must be affirmed.

Respectfully submitted,

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APPENDIX A

THE RELIGIOUS SOCIETY OF FRIENDS AND THE CIVIL LIBERTIES COMMITTEE

The interest of the Civil Liberties Committee of the Philadelphia Yearly Meeting of the Religious Society of Friends in the issues now before this Court can best be understood in the light of the history of the religious experiences and social testimonies of the Religious Society of Friends (Quakers).

Who Are the Quakers?

The Religious Society of Friends arose in England more than 300 years ago in a time of turbulence and change in both religion and politics. In the Established Church great emphasis was placed upon outward ceremonial. There and in some of the dissenting churches religious faith tended to be identified with acceptance of a creed. Many restless seeking spirits broke away from the churches and, singly or in groups, turned inward in quest of a religion of personal experience and direct communion with God.

George Fox (1624-1691), the founder of the Religious Society of Friends, was one of these "seekers." From his youth he was serious and thoughtful, given to lonely pondering of the Scriptures and to deep searching of his heart. In vain he sought counsel and help from the official spiritual guides in the churches. None could give rest to his soul or speak to his condition. But finally, he records in his *Journal*,

> when all my hopes in . . . men were gone, so that I had nothing outwardly to help me, nor could I tell what to do, then, O then, I heard a voice which said, "There is One, even Christ Jesus, that can speak to thy condition." And when I heard it, my heart did leap for joy.

Within himself, as a present experience, he had found the spirit of the living Christ and knew that it was an

experience open to all men. "This was the true Light that lighteth every man that cometh into the world."

In 1647 George Fox began to preach, convincing many persons, who presently associated together, calling themselves "Children of the Light." A powerful prophetic personality and a born leader of men, he soon attracted a group of young men and women who joined him in the joyous work of spreading abroad the good news that "Christ has come to teach His people himself." These "first publishers of Truth" did not think of their message as a new gospel. It was "primitive Christianity revived." They came to call themselves "Friends of the Truth" or simply "Friends." By the world they were called "Quakers" because of the fervor with which they spoke. They were subjected to indignities and cruelties in prisons and at the hands of mobs. But nothing could quench their ardor or chain their spiritual power. By their faithfulness and the organizing genius of their leader they shaped a religious community which was able to survive when various other sects of the period disintegrated and disappeared.

Not only with their words but with their lives did they preach. Along with intense religious fervor there ran a zeal for practical righteousness. At this early period arose most of the distinctive Quaker testimonies, which expressed in action their belief in equality, simplicity and peace. To provide succor for those under persecution and to nourish and discipline the individual and group life of the members, George Fox took the lead about 1667 in organizing the system of Monthly, Quarterly and Yearly Meetings which have given stability and continuity to the Society.

As early as 1655 the New World had attracted Friends and within a remarkably few years the seeds of Quaker faith were planted in virtually every one of the British colonies in North America and the West Indies. Friends were widely persecuted but the test of martyrdom came in Massachusetts, where the authorities resorted to severe measures to stop the publishing of the Quaker truth. Many faithful men and women underwent tortures and imprisonments; four suffered death before the intolerant laws were

finally broken down. During this period, however, a haven was found in Rhode Island, where the first Quaker Yearly Meeting was established in 1661.

A period of expansion and consolidation followed George Fox's visit to America in 1671-73. The succeeding decade saw West Jersey and Pennsylvania established as Quaker colonies. Here Friends under the leadership of William Penn undertook to carry out a "holy experiment" in conducting a government on New Testament principles. Friends retained political control in Pennsylvania until 1756, when at the onset of the French and Indian war they gave up their seats in the Assembly rather than vote war measures.

Quaker policy toward the Indians was an outgrowth of their conviction that all men are equal before God, irrespective of color. This principle gradually formed the Quaker attitude on the question of Negro slavery. George Fox had been an early advocate of the Negro's rights. Philadelphia Yearly Meeting advised against the slave trade in 1696 and antislavery sentiment grew slowly until 1758, when John Woolman made a moving plea for the liberty of the slaves and began his great work on behalf of the Negro. He, with Anthony Benezet, aroused the consciences of many Friends and others in both America and England, and gave strong impetus to the movement that finally resulted in the abolition of slavery.

Friends' opposition to war took many of them out of public life after about 1750 and this withdrawal, together with increasing quietism, caused a profound transformation in the Society. More and more the Friends shunned the outside world and centered upon deepening their own spiritual lives and hedging their Society about with their distinctive rules and customs. Although this preserved some valuable elements of the Quaker way of life, it also brought a narrowing introspection which was fertile ground for controversy.

By 1800 two divergent tendencies became apparent

among American Friends. Both had roots in early Quaker thought but had subsisted together without seriously disturbing the unity of the Society. One was an increased emphasis upon the Inner Light as the basis of faith; the other, an increased interest in evangelicalism, which centers upon the meaning and influence of events in Christian history and finds its primary authority in Scripture. Both these trends, the liberal and the evangelical, reflected influences dominant in contemporary Christian thought. The chasm between the two Quaker groups grew steadily wider until in 1827 a separation took place in Philadelphia Yearly Meeting, followed by similar separations in Baltimore, New York, Ohio and Indiana. Later in the century there were further separations within the orthodox body.

Despite these unhappy developments, the nineteenth century saw some notable advances among American Quakers. Friends in great numbers migrated to successive new frontiers in the Northwest Territory, Iowa, Kansas, and the trans-Mississippi West, reaching finally the Pacific coast. Education, always a major concern of Friends, was promoted by the establishment of schools and colleges. The withdrawal of Friends from active participation in political life left them free to work for the abolition of slavery and of war, the welfare of Negroes and Indians; temperance, prison reform, and the rights of women.

In the twentieth century Friends were once again called to be faithful to their peace principles. Early in the World War of 1914-18 the Meeting for Sufferings of London Yearly Meeting initiated humanitarian service in the relief of wartime suffering. The American Friends Service Committee was organized in 1917 to make possible the participation of American Quakers in this European emergency work. From modest beginnings this organization has gone steadily forward in the number and variety of its undertakings at home and abroad, providing the principal agency through which Friends all over the American continent give expression to their faith in the effectiveness of love and goodwill.

What Is the Philadelphia Yearly Meeting?

Friends on both sides of the Delaware River first came together for a General Meeting at Burlington, New Jersey, in 1681. For a few years two General Meetings were held each year, one at Burlington and the other at Philadelphia, both embracing the same membership. In 1685 it was decided to have but one annual General Meeting to be held alternately at the two places. The meeting now assumed the title of "The General Yearly Meeting for Friends of Pennsylvania, East and West Jersey and of the adjacent provinces". From 1760 on the sessions were held only at Philadelphia.

The separation of 1827 necessitated two Philadelphia Yearly Meetings, each covering the same geographical area but mutually exclusive in membership. With the passage of a century, however, a trend towards unity made itself felt on various levels of Yearly Meeting life. The Young Friends Movement, the American Friends Service Committee, and other organizations provided common participation in the concerns of all Friends. A number of Yearly Meeting committees merged their efforts in the interest of greater effectiveness. In 1933 changes were made in the Disciplines of both bodies to provide for the establishment of United Monthly Meetings. An even more decisive step towards closer unity was taken in 1945, when the two Philadelphia Yearly Meetings arranged for the establishment of the Philadelphia General Meeting of the Religious Society of Friends.

In 1954 the two Philadelphia Yearly Meetings united to form the Philadelphia Yearly Meeting of the Religious Society of Friends. The Monthly, Quarterly and Half-Yearly Meetings are constituent bodies of the Yearly Meeting.

Friends General Conference had its beginnings in 1868 and was organized in 1900 to be composed of six Yearly Meetings (Baltimore, New York, Indiana, Genesee, Illinois,